

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

LINDA A. BURLESON

§

VS.

§

CIVIL ACTION NO. 5:04cv66

**COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION**

§

MEMORANDUM ORDER

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. Plaintiff filed objections to the Report and Recommendation. The Court conducted a *de novo* review of the Magistrate Judge's findings and conclusions.

Plaintiff objects to the Magistrate Judge's recommendation that Plaintiff's above-entitled and numbered social security cause of action be affirmed. Specifically, Plaintiff asserts the Magistrate Judge completely ignored the report from Dr. Flores stating Plaintiff is not able to perform light work. Plaintiff further contends there is substantial evidence supporting Plaintiff's claims of chronic pain. According to Plaintiff, the vocational expert ("VE") testified on cross-examination that if a plaintiff had chronic pain, a plaintiff would not be able to complete a full work day or work week, and therefore, there would be no jobs available in the national economy.

After reviewing the transcript, the briefs of the parties, and the Report and Recommendation, the Court finds Plaintiff's objections are without merit. The Magistrate Judge considered Dr. Flores' report on page 19 of the Report and Recommendation. The Magistrate Judge stated Dr. Flores was

not the treating physician providing medical treatment for Plaintiff's back impairment; Dr. Flores had not provided any medical treatment for over three years; Dr. Flores did not examine Plaintiff during the relevant period, and his RFC assessment form does not show he supported his opinion by medically acceptable clinical or diagnostic techniques; and Dr. Flores' opinion is inconsistent with the medical notes of two specialists who were actively treating Plaintiff's back complaints. As for Plaintiff's claim that the VE testified on cross-examination regarding chronic pain, the Magistrate Judge correctly noted the ALJ did not find Plaintiff had chronic pain as a limitation, and the ALJ was not bound by VE testimony based upon rejected assumptions.

The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is hereby

ORDERED that the above-entitled Social Security action is **AFFIRMED**.

SIGNED this 30th day of August, 2005.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE